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The Silent Male Rape Victims in India

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ABSTRACT

This paper critically examines male rape in India. The male rape is not recognized in law. The male rape is a prevalent issue in society that can have profound number of negative effects on a victim. We are thinking about protection of women from sexual violence, rape and other sexual exploitation and we have enacted number of laws for them. What about the protection of males and boys? How can we protect their dignity and respect from the attack sexual assault and rape? There is a stereotype in the law and society that a man cannot be raped by women.

I. INTRODUCTION

The Rape is a general term as the crime committed by men against women. It has been conceptualized as sexual victimization of women by male predators that manifest the rape – supportive patriarchal society. However in reality it has been found that there is a significant number of rapes and other sexual violence victims are male too but the mindset that rape cannot happen with men distanced these rape survivors from the research spotlight.

The male rape is seen as a taboo in Indian society which has a negative connotation among heterosexual men, the rape of males is always seen with the perspective of manliness and masculinity. Consequently, most of the victim feared to report sexual assault they experienced.

They are generally worried that people will doubt their sexual identity and label them homosexual or may call them masculine if they open up about the assault. This fear forced thousand of male victims to hide and deny their victimization that results in thousands of rape cases goes unreported, myths regarding males in society played an important role.

II. STEREOTYPE REGARDING MEN IN THE SOCIETY

- **Men are not vulnerable**

In the male dominant society like India and Pakistan, Men are seen as the strongest of all because of which they are not supposed to do the things that go against their manliness, not

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even that they are vulnerable to it. These societies believe that only women can be raped.

- **Men always want sex**

Another stereotype regarding male gender in society is that they always want sex, they always get aroused easily. This created a notion in that society that most of the sexual intercourse between men is voluntarily in nature and can happen only if they are willing to enjoy any sexual activity.

- **Traumatization**

Another notion among the society regarding males is, males are subjected to less traumatization, hence they are less likely to get affected by any kind of abuse.

These stereotype about masculinity made men silent victims of sexual offences. However, now most of the country has recognized that men can be raped too and criminalized it.

III. LAWS REGARDING RAPE OF MALE IN DIFFERENT COUNTRIES

In the UK, initially "**Criminal Justice and Public Order Act 1944**" made changes in law regarding rape that removed buggery from the statutes and add the term "non – consensual anal as well as vaginal penile penetration". Though this act, it was for the first time effort was made to recognize the rape of males in the UK legal system. Later "**Sexual Offences Act, 2003 (England And Wales)**" redefined it further, to include non – consensual penetration through the mouth and removed the vague provision of indecent assault. However, the definition of rape still requires penile penetration. Hence, rape laws of UK are still not gender – neutral as women cannot be penalized for raping men as per the current definition.²

In Scotland, the "**Sexual Offences (Scotland) Act, 2009**" brought serious changes in their rape laws and redefined it as:

"The intention or reckless penetration of the penis (to the extent) into the vagina, anus or mouth of another person, without the consenting and without any reasonable belief that consent was obtained".

This definition gender – specific term "women" was replaced by "person" to include rape victims into the ambit of definition.

In civil law countries like USA, Canada also attempted to make their rape laws more gender – neutral so that it includes men also. Definition of rape as per (**United States Department of Justice, 2012**) is:

² (PDF) The scope of male rape: A selective review, policy an practice, www.ResearchGate.net

“The penetration no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

Despite the changes in rape and sexual offences of these countries, there are still some countries like India, Pakistan where rape is continued to n be seen as a gendered crime.

IV. MALE RAPE AND INDIAN LAWS

In India rape is considered as the act of penile penetration or any foreign object into the vagina without the consent of women or girl, **section – 375³ of IPC mentions about rape as “sexual intercourse with the women against her will, without her consent, by coercion, misrepresentation or fraud or at the time when she has been intoxicated or duped or is of unsound mental health and in any case, if she is under 18 years of age.”** If we analyze the definition then we find it makes two clear, albeit subtle inferences:

A rape offender is necessarily a man.

A victim of rape is necessarily a woman.

Hence the whole definition is considered the rape of only women and there is no clause for the rape of male. It manifests that in India there is no particular law if male rapes another male or female rapes a male. At most they can be sodomised under section - 377 of IPC except for this section all other laws and sections are meant only for females. This inequality in the treatment affecting the equalitarianism of our constitution.

Though there is a **POCSO (Protection of Children From Sexual Offences)** for the sexual assault of male child such provision does not exist for an adult of male. There is no reason why instances of sexual assault on a male child is treated differently from a similar act committed on adult male. If we made the provision for the rape of male child then why can't we make similar provision for men also?

However if we considered the ground reality that is reflected in the survey of Insia Dariwala which surveyed 1500 male out of which 71 % of men surveyed said they were abused, 84% said they had not told anyone about the abuse and the primary reason for this were shame 55%, followed by confusion 50.9%, fear 43% and guilt 28.7%.⁴ Since the interpretation of rape in India is only restricted to insertion of penis or object in the vagina, the cases of rape and sexual assault of male has been rising continuously there were very instances where the

³ Indian Penal Code 1860, section – 375.

⁴ The Guardian, May 23, 2018 / Indian – study – male – sexual – abuse – film – maker – insia – dariwala (last visited April 14, 2020)

male was subjected to such crime but because of the paucity of law, nothing happened.⁵

For instance on 16th of June 2018, a 20 – year – old boy had to endure the sexual assault by five men in Ghaziabad and a foreign object was inserted into his rectum but since our laws does not account for such offences, the case was registered under section – 377 of IPC. Similarly, there are lots of causes in the armed forces where men are subjected to lots of sexual violence. ⁶ At present there are two laws which realize male can also be sexually assaulted.

First the **POSCO (Protection of Children From Sexual Offences)** that address sexual abuse committed against both male and females child.

The second one is the **UGC “Sexual Harassment of Women at Workplace.”**⁷

V. GENDER NEUTRALITY OF RAPE LAWS

The 174th law commission of India in March 2000 recommended that rape laws in India should be made gender – neutral to protect male victims too. The underlying principles behind it is a presumption that offence of rape will be desexualized and the stigma attach to it will vanish. ⁸ However the government did not act to implement the suggestions

Later in 2017, a PIL was filed at Delhi High Court by advocate Sanjiv Kumar, which challenge the constitutionality of the rape laws under the IPC. In this petition he stated:

“Gender neutrality is the simple reorganization of reality men sometimes fall victim to the same or at least very similar acts of those suffered by women Male rape is far to be prevalent to be termed as an anomaly or a freak incident. By not having gender – neutral laws, we are denying a lot more men justice than is commonly thought.”⁹

On the same reasoning on July 2019 KTS Tulsi, a senior lawyer and parliamentarian in the Rajya Sabha also brought a gender – neutral (Criminal law Amendment bill, 2019) before parliament to make the rape laws gender – neutral in India. As per make the rape laws gender – neutral in India. As per him,

“Laws need to be balanced, the balance has been disturbed. All sexual offences should

⁵ Patrizia Riccardi, Male rape: The silent victim and the gender of the listener, 12 prim care companion J. Clin. Psychiatry (2010).

⁶ Dhananjay Mahapatra / TNN / Dec 24, 2006 and 23: 11 1st, Rape, Sodomy equal before law ? / India News – Times Of India.

⁷ Delhi July 13, July 13 and 1st, supra note 12.

⁸ Flavia Agnes, Law Ideology and female Sexuality: Gender Neutrality in Rape Law 37Econ. Polit. Wkly. 844-847 (2002)

⁹ The Criminal Law Amendment Bill 2019 and gender – neutral sexual offences in India, The Criminal Law Blog (2020).

be gender – neutral. Men, women and other genders can be predators and, women and others needs to be protected. ”¹⁰

VI. RESISTANCE TO GENDER NEUTRAL SEXUAL OFFENCES

In 2013, the center passed a criminal amendment act under the recommendation of Justice Verma Committee which replaced the term rape from sexual assault to cover all the genders, however later changes were reversed due to criticism and resistance from feminists and women’s group. These group see a call for gender – neutral laws as an attack on feminism and believe rape is an explicitly patriarchal crime.¹¹

VII. CONCLUSION

All history attests that man has subjected woman to minister to his that man has subjected woman, to minister to his sexual pleasure, to be instrumental in promoting his comfort . He has done all he could do to debase and enslave her mind and now he looks triumphantly on the ruin, and says the being he has thus injured is his inferior. This is the one side of the coin the other side is totally different in which men also fall in the category of being a victim of rape. We have witness over the years, criminal in India have been revised by lawmakers to meet the changing dimension of society. The need for gender neutral rape laws becomes the need of the hour, hence putting in all into perspective the criminal law (amendment) bill 2019, aims to make such progress, when its call for a gender – neutral section that punishes any form of sexual assault. At present in section – 375 IPC which recognizes female as a victim and male as the perpetrator thus, there is a legal gap in this section when both victims and predators are male and female. Even the supreme court does not entertain pleas which call for gender – neutral rape laws by stating that legislation will look into the concerned issue. Because of non – availability of gender – neutral laws, most of the cases gone unreported or the offenders get minimal punishment. A principal of criminal law is surely that all persons should be protected equally from any kind of crimes, mere biological difference in such cases do not constitute that the suffering of the male the opposite gender is less and need not to be addressed.

¹⁰ Delhi July 13, July 13, and 1st, supra note 12.

¹¹ Praveen, supra note 11.